



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

February 10, 2006

UPPER ANTELOPE CREEK WATER USERS  
c/o TOM WADDOUNS  
4253 ANTELOPE ROAD  
MOORE, ID 83255

**Re: Letter received 1/18/2006 regarding futile call determination on Antelope Creek**

Mr. Waddoups:

This letter is in response to your letter received by the Idaho Department of Water Resources (IDWR) on January 18, 2006 in which you raised several issues regarding water district operations on Antelope Creek and tributaries. The issues raised in your letter include changing or adding either water district guidelines or general provisions to incorporate "time and quantity in determining Antelope Creek connectivity to the Big Lost River", and establishing channel losses in Antelope Creek to investigate the possibility of streamlining the futile call process.

The January 18, 2006 letter expresses an opinion that was also mentioned in previous letters to IDWR, that the general provisions for the operation of the district, as decreed in the Snake River Basin Adjudication, should be changed to incorporate "time and quantity" in determining whether Antelope Creek is connected to the Big Lost River. IDWR addressed previous questions from you regarding changes to the general provisions in correspondence dated September 5, 2005. Provisions similar to what you described in your most recent letter were decreed for the Big Lost River above Mackay Reservoir. However, those provisions were carried over from provisions in an earlier decree. No such history exists for Antelope Creek, and so no similar provisions were incorporated in the SRBA decree for Antelope Creek. There may have been opportunities for Antelope Creek water right holders to suggest such provisions during the adjudication, or by filing objections to either the SRBA Big Lost River general provisions or the SRBA Director's Reports. IDWR is not aware that Antelope Creek users sought to have Antelope Creek administered separately from the Big Lost River or to include some type of futile call provision in their water rights. The users can still petition the SRBA court directly for changes to the general provisions or inclusion of some type of futile call provision in their water rights. Given that considerable time has elapsed since the SRBA court has issued partial decrees and adopted the Basin 34 general provisions, it is questionable whether any petition to the SRBA court would succeed.

It appears from your letter that the main concern is curtailment of all surface water diversions from Antelope Creek and tributaries in order to establish whether a call for water by holders of senior water rights on the Big Lost River is futile. This concern is understandable given the lack of supplemental groundwater supplies in the Antelope Valley, and the fact that junior ground water right holders in the Big Lost River valley may divert out of priority if they

have approved mitigation or flow augmentation plans. However, IDWR believes that the process of determining a futile call can be accomplished in a reasonable time and with minimal disruption to if it is conducted appropriately. This requires having functioning and effective head gates and measuring devices on all diversions, adequate records of diversions from Antelope Creek and tributaries, cooperation between the water users and the water master, and communication between the watermaster and IDWR.

The second issue raised in the letter is in regard to measurement of stream channel losses for the purpose of establishing criteria to determine if a call is futile without curtailing all the users. IDWR is willing to provide assistance in measuring stream flows on Antelope Creek and can evaluate the data with the watermaster. However, many factors affect stream channel conveyance loss and losses can vary throughout a season and from year to year. Even if a quantity can be defined for determining whether a call is futile, there is really no legal basis for its implementation at this time.

If you have any questions or want to discuss this issue further, please call me directly at 208-287-4959.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Luke".

Tim Luke  
Water Distribution Section

cc: WD 34 2006 file

Bob Duke, Water District 34 Watermaster  
IDWR Eastern Region – Idaho Falls